HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

W.P.NO.27031 OF 2005

ORDER:-

The Petitioner's firm is engaged in the business of exporting the processed frozen prawns to Japan, Australia and other foreign countries. The Petitioner is a licensee with the 1st Respondent-Market Committee. The 1st Respondent is empowered to levy and assess the market fee under Section 12-B of A.P.(Agricultural Produce & Livestock) Markets Act,1966 (for short "the Act") when the incident of purchase or sales takes place within the notified area. It is the case of the Petitioner that in case of purchase of the prawns from outside the notified area or purchase the prawns from the area situated outside the State or by purchasing the same from the prawn farmers within the notified area, the market committee is not competent to levy any market fee. Bye-law No.24(6) of the market committee also provides that in respect of mere processing by a licensed trader for export, no market fee can be levied. The Petitioner further states in respect of purchase made within the notified area, it paid the market fee, but the 1st Respondent by including the purchase made outside the State, a demand notice was issued on 29-03-2005 demanding a sum of Rs.3,25,602/-. Challenging the said demand, the present writ petition was filed.

02. The 1st Respondent filed a counter-affidavit stating that the agricultural market committee was constituted under the provisions of the said Act for regulating the sale and purchase of the notified agricultural produce and livestock. The prawn is one of the notified livestock in respect of the Respondent-market committee. Explanation 1 to proviso to the Section 12(1) of the Act says that all the notified produce/livestock taken out of a notified market area shall be presumed to have been purchased or sold within such area unless contrary is proved. The Petitioner states that they are entitled for exemption under Rule 74 on production of proof of payment of market fee to the effect that it was subjected to levy and payment of market fee at the hands of another market committee. Since the Petitioner failed to produce any proof of payment of market fee, they are liable to pay the market fee. The Petitioner is a licence-holder for the year 2001-2002 and transacted the business within the notified market area. The Petitioner failed to produce books of accounts in sptite of several reminders to the Petitioner, but based on the periodical turnovers furnished by the Petitioner wherein the purchases were shown as Rs.12,24,99,663/- and on cross-verification from the Office of the Commercial Tax Officer, Bhimavaram wherein the turnover was shown as 18,65,44,080/- the Petitioner was issued a notice on 19-01-2004 proposing to go for the best judgment taking into consideration the turnover furnished to the Commercial Tax Department. At that stage, the Petitioner submitted books of accounts on 29-03-2005. The books of accounts were verified and assessment was made by order dated 29-03-2005 while taking the total turnover as Rs.18,65,44,080/- and it was held that the Petitioner is liable to pay the market fee as Rs.9,32,720/-. After deducting the market fee already paid, the demand was made for Rs.3,25,608/-. While assessing the market fee, the assessing authority exempted the payments made at different check-posts throughout the State as claimed by the Petitioner. Thus, there was no irregularity in the demand made by the Respondents.

03. The learned counsel for the Petitioner submitted that they are entitled for exemption in respect of the live stock which was already subjected to levy and payment of the market fee under Rule 74 of the Rules and the Respondent has not taken into consideration. It is also submitted that they are entitled for exemption from payment of the market fee in respect of the purchase outside the notified area. These are all facts, which have to be verified by the competent authority and it cannot be decided in a proceedings under Article 226 of the Constitution of India. The Petitioner has a right of appeal under Section 12(E) of the said Act and without availing the such remedy, the present writ petition was filed.

04. This court by order dated 20-12-2005 granted liberty to collect the market fee with reference to the turnover relating to the transaction carried out at Bhimavaram and granted stay in other respects. In view of the same, the

Petitioner is given liberty to file an appeal to the competent authority, within a period of three(3) months from the date of receipt of a copy of this order, on deposit of 50% of the demanded market fee before the said appellate authority and the said appellate authority shall consider the appeal and dispose of the same in accordance with law after hearing the Petitioner and perusing the record produced by it within a period of three(3) months thereafter.

The writ petition is disposed of accordingly. No costs. Miscellaneous Petitions pending, if any, shall stand closed.

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A.RAMALINGESWARA RAO,J

24-07-2014
TSNR